
Supreme Court of the United States

OCTOBER TERM, 1941

No. 989 33

In the Matter
of
THE WESTERN PACIFIC RAILROAD COMPANY,
a corporation,

Debtor,

RECONSTRUCTION FINANCE CORPORATION

Petitioner,

v.

WESTERN PACIFIC RAILROAD CORPORATION, a Corporation;
A. C. JAMES Co., a Corporation; THE RAILROAD CREDIT
CORPORATION, a Corporation; THE WESTERN PACIFIC
RAILROAD COMPANY, a Corporation; IRVING TRUST COM-
PANY, a Corporation, as substituted Trustee under the
General and Refunding Mortgage of The Western Pacific
Railroad Company; FREDERICK H. ECKER, JOHN W.
STEDMAN, and REEVE SCHLEY, constituting the INSTITU-
TIONAL FIRST MORTGAGE BONDHOLDERS COMMITTEE; and
CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and
SAMUEL ARMSTRONG, as Trustees under the First Mort-
gage of The Western Pacific Railroad Company,

Respondents.

ANSWER OF THE RAILROAD CREDIT CORPORATION TO PETITION FOR A WRIT OF CERTIORARI

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Respondent.*

Baltimore, Maryland,
March 24, 1942.

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*To the Honorable the Chief Justice and the Associate Justices
of the Supreme Court of the United States:*

This respondent respectfully states that the grounds upon which Petitioner bases its application for a writ of certiorari to review the opinion of the United States Circuit Court of Appeals for the Ninth Circuit (reported in 124 F. (2d), 136) (R. 2663), entered November 28, 1941, reversing an order of the United States District Court for the Northern District of California, Southern Division (34 F. Supp. 423), (R. 1600), which had approved a plan of reorganization for The Western Pacific Railroad Company under Section 77 of the Bankruptcy Act (11 U. S. C. A. § 205) are in substance like those enumerated in Petitions Nos. 819 and 820, in this cause.

In its answering brief filed with this Court on January 16, 1942, respondent urged that the requests sought by Petitions Nos. 819 and 820 in these proceedings for the issuance of writs of certiorari be denied for the reasons that said petitions contained no grounds justifying the issuance of said writ; that the opinion of the Court below was not only in accordance with the requirements of Section 77 of the Bankruptcy Act (11 U. S. C. A. § 205), but was not in conflict, as asserted, with any decision of this Court or any Circuit Court of Appeals and, further, that there was no special or important reason for granting the petitions for certiorari. Since the grounds upon which the present petitioner predicates its request for certiorari are in substance similar to those recited in Petitions Nos. 819 and 820, it is the opinion of respondent that its brief of January 16, 1942, sufficiently answers the questions presented in Petition No. 989 and, therefore, respectfully urges that the request for certiorari be denied.

REASONS ASSIGNED BY PETITIONER FOR GRANTING THE WRIT OF CERTIORARI

On pages 5 to 9, inclusive, of its petition, petitioner sets forth under Paragraphs (1) and (2) its reasons for granting the writ of certiorari.

Paragraph (5) of Rule 38 of this Court clearly outlines the reasons which this Court will consider in a petition for review on writ of certiorari. Upon analysis, it becomes apparent that most of the "reasons" assigned by petitioner amount to nothing more than a statement showing how the Interstate Commerce Commission arrived at its conclusions embodied in the plan of reorganization; the adoption by the District Court of the Commission's findings; and the reversal by the Court below of the order of the District Court approving the plan of reorganization. These are not "special and important reasons" which Rule 38, paragraph (5), prescribes as grounds or causes for issuance of the writ.

In addition to these general statements of petitioner under this caption, it also alleges the following grounds for the exercise of this Court's judicial discretion in granting the writ:

- (a) "... The court below, however, reversed on the ground that the Commission had not made findings of fact as to the value of the railroad as a whole, the value of the securities held by each class of creditors, and the value of the new securities to be issued. . . ." (Page 6).
- (b) "... The decision below is in square conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Matter of Chicago, Milwaukee, etc., Railroad Company*, decided December 4, 1941, . . . upon the question of whether stockholders can be excluded from participation in the reorganized company upon a finding that their equity is without value because the earnings

of the Debtor would not support a capital structure large enough to include them. . . ." (Page 8).

- (c) ". . . If the opinion of the court below is to be construed as requiring an independent determination by the District Court of all questions of valuation, despite an initial determination of such questions by the Commission, it constitutes, we believe, a serious misconstruction of the provisions of Section 77. . . ." (Page 9).

In its opinion approving the plan of reorganization certified by the Commission, the District Court (34 F. Supp. 493, 504), said:

"The determination of the questions relating to the distribution of the new securities, including legal priorities and allocations, involves private rights and is a judicial function, within the province of the court. . . . I am wholly in accord with the conclusions reached by the Commission upon both issues and all matters incidentally related thereto. . . ." (R. 1597).

The District Court thereupon summarily adopted the conclusions of the Commission. The opinion of the Court below held that the duty of determining the values of certain items of property by the Commission had not been performed, in consequence of which "Lacking the requisite valuation data, the court was in no position to exercise the informed, independent judgment which appraisal of the fairness of a plan of reorganization entails", (R. 2671) citing *Consolidated Rock Products Co. v. Du Bois*, 312 U. S. 510; *National Surety Co. v. Coriell*, 289 U. S. 426, 436; *First National Bank v. Fler-shem*, 290 U. S. 504, 525; *Case v. Los Angeles Lumber Products Co.*, 308 U. S. 106, 115. The opinion of the Court below is altogether consistent with the statute, Subsection (c) of which provides that "If it shall be necessary to determine the value of any property for any purpose under this section,

the Commission [Interstate Commerce] shall determine such value and certify the same to the court in its report on the plan." The opinion of the Circuit Court of Appeals, Ninth Circuit, recognizes that the duty of determining the value of any property for any purpose under Section 77 rests initially on the Commission, and not on the court, but such determination must, however, include a valuation of the entire enterprise, after which the court must "exercise its own independent judgment; and this is true whether such determination relates to value or to some other subject." Such clear-cut findings or values are essential to the intelligent approval of the plan.

The Court below has no quarrel with the findings of the Commission so far as it has gone, its opinion intimating that it failed to go far enough in valuing all items of property, some sixteen of which the opinion enumerates, which under the statute it is its duty to determine and which the court found was not performed. Furthermore, the opinion of the Court below is not, as alleged by petitioner, contrary to the views expressed by this Court in *Palmer v. Massachusetts*, 308 U. S. 79, 87. Admittedly, a proceeding under Section 77 is not an ordinary proceeding in bankruptcy, but "is a special proceeding which seeks only to bring about a reorganization, if a satisfactory plan to that end can be devised." *Continental Illinois Natl. Bank & Trust Co. v. Chicago R. I. & P. Ry. Co.*, 294 U. S. 648, 676. Insisting, as it does, upon a finding of values by the Commission before the District Court can exercise an "informed, independent judgment" the decision of the Court below does no more than to follow the principle enunciated by this Court in the *Palmer* case that "The judicial process in bankruptcy proceedings under § 77 is, as it were, brigaded with the administrative process of the Commission."

From the foregoing this respondent claims there is no special or important reason for granting the writ to review the issues raised in (a) and (c) above which are not among those reasons outlined in paragraph (5) of Rule 38.

In paragraph (b) above, petitioner contends that the decision below is in square conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Matter of Chicago, Milwaukee, etc., Railroad Company*, 124 F. (2d) 754. The decisions of both Courts were arrived at in the light of the *Consolidated Rock Products* case, *supra*, resulting in disapproval of both plans because of lack of findings by the Commission on "all vital issues, controverted and uncontroverted" which must include "values of properties separately considered and also of Debtor's property as a whole. Findings must cover values of liens to be surrendered and values of securities given in exchange. . . . The findings must be sufficiently complete on these matters, that the court may, from its examination, ascertain whether full compensation has been made for the entire bundle of rights which each of the creditors is called upon to surrender." *Matter of Chicago, Milwaukee, etc., Railroad Company, supra*.

The only difference between the two decisions is that in the *Milwaukee* case the Court was "satisfied that the evidence supports the finding of the Commission approved by the District Court that the equity of the holders of the debtor's preferred stock and its common stock has no value." The fact that in the *Milwaukee* case the Court was satisfied with the Commission's findings as to a lack of equity for the stockholders, it does not follow that because the Court below left this question open until the Commission had determined the value of those units of property which it felt it had not done there is necessarily a conflict in the decisions of the two cases. Likewise with respect to the decision of the Court in *Matter of Chicago and North Western Ry. Co.* (unreported) (referred to on Page 8 of petitioner's application) where the same Court as in the *Milwaukee* case affirmed the order of the District Court confirming the plan of reorganization. In the *Northwestern* decision the Court affirmed the order of the District Court

confirming the plan not, because the Commission had made specific findings of value, but

"It is a question of whether the report of the I.C.C., which was full and complete, fair and open, but lacking in one respect, — failure to make specific findings of values, — may, or should, be approved without said findings. In fact, the issue may be stated even more strongly against the minority. Does not the vote of approval supply the proof that the report of the Commission contained the evidence, and the Commission's finding sufficiently states the facts, to justify us in holding that separate and more detailed findings are unnecessary? We think it does."

Because the creditors had almost unanimously voted approval of the plan the Court differentiated between the two cases by holding that said vote of approval.

"... was an equivalent of a waiver of more specific findings by all who approved the plan. . . ."

While respondent may disagree with the reasoning of that Court, and, therefore, its conclusion, in the matter of approving the plan as fair and equitable because "all the creditors of each group who have voted, are overwhelmingly in favor of it", and obviously offered as a means of terminating these lengthy proceedings, the soundness or unsoundness of the reasoning does not present a conflict with the decision of the Court below. Here we have decisions of two Circuit Courts of Appeal both holding a lack of specific findings by the Commission, one of which waives the requirement of specific finding because the creditors voted acceptance of the plan, a situation which did not obtain with respect to the other. Where then is the conflict with respect to the duties of the Commission under the statute?

The decision admits that there was a failure by the Commission "to make specific findings of values." Being realistic because the various groups of creditors had agreed to support the plan, it does not follow that the decision is in conflict with that of the Court below.

Contrary to what petitioner alleges to be a conflict, the decisions in all these cases follow the provisions of the statute with respect to the duties and obligations imposed upon the Commission and the District Courts. Nor is there any other ground in petitioner's application which may not have been answered herein that would justify this Court in granting the writ of certiorari.

CONCLUSION

It is respectfully submitted, therefore, that the questions raised in Petition No. 989 have been answered with finality by the decisions of this Court in *Consolidated Rock Products Co. v. Du Bois, supra*; that no conflict exists between the decisions of any of the Circuit Courts of Appeal under Section 77; that there is no special or important reason for granting petition for certiorari and, therefore, petitioners application should be denied.

Respectfully submitted,

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Respondent.*

Dated: March 24, 1942.